

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOHN FUCHS, et al.,

Plaintiffs,

- against -

L.A. WENGER
CONTRACTING CO., INC., et al.,

Defendants.
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ORDER

CV 05-0051 (JS) (JO)

JAMES ORENSTEIN, Magistrate Judge:

The motion by the plaintiffs to compel production, Docket Entry ("DE") 13, is GRANTED in its entirety. Defendants L.A. Wenger Contracting Co., Inc. and Louis A. Wenger have not responded to the motion, and therefore are deemed not to oppose the requested relief.

The response by counsel for defendants L.D. Wenger Construction Co., Inc. and David E. Wenger, DE 16, is thoroughly unpersuasive and simply ignores relevant aspects of the pending Complaint and the defendants' discovery obligations under applicable rules. In essence, these defendants assert that the plaintiffs cannot obtain the discovery needed to prove their claims unless and until they have proved their claims. Such a rule would undoubtedly be convenient to these defendants, and indeed to any defendant, but it is of course entirely at odds with the law. Moreover, the defendants' reasoning ignores the substance of the claims based on the defendants' alleged failure to make required contributions to the relevant funds, independent of other claims seeking collection of a past judgment. Finally, the defendants' assertion that the outstanding discovery demands place burdens on non-parties is demonstrably false, as the demands are directed only to named defendants, and it is only those parties who must comply.

Each defendant shall provide all of the discovery requested by the plaintiffs in the outstanding discovery requests by the time of the next scheduled conference on September 9, 2005, at 2:00 p.m. Counsel for each party must appear in person at that conference.

SO ORDERED.

Dated: Central Islip, New York
August 25, 2005

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge